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February 23, 2007

**DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: August 21, 2006

Case Number: TSO-0420

This Decision concerns the eligibility of XXXXX (the individual) to hold an access authorization<sup>1</sup> under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be granted. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be granted.

***I. Background***

The individual is an employee of a contractor at a DOE facility. Due to concerns about the individual's past use of alcohol, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on December 15, 2005. *See* DOE Exhibit 6. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on March 30, 2006. *See* DOE Exhibit 7. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about her eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to her. Accordingly, the DOE local office proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for access authorization.

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<sup>1</sup>Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The Notification Letter included a statement of that derogatory information and informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for access authorization. The individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, a long-time coworker and friend of the individual, a former coworker who later became the individual's supervisor, a current coworker and acquaintance of the individual, and the DOE psychiatrist. The DOE Counsel submitted exhibits prior to the hearing.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization, as well as the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern has been resolved.

## **II. Analysis**

### ***A. The Basis for the DOE's Security Concern***

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed as alcohol dependent or as suffering from alcohol abuse. DOE Exhibit 6 (citing 10 C.F.R. § 710.8(j)).

These statements were based on the individual's description of her alcohol use at the December 15, 2005 PSI, and her arrests for DUI, once each in 1988 and 1990, and twice in 1992. *Id.* The Notification Letter also cited a March 30, 2006 diagnosis by the DOE consultant psychiatrist that the individual suffered from "Alcohol Abuse, by History." DOE Exhibit 7. In his report, the psychiatrist stated, "Presently, she does not meet criteria for alcohol abuse or dependence, however by her report, does engage in relative risk taking behaviors such as knowingly driving after having too much to drink." *Id.* The report states that the individual "feels the last time that happened might have been the beginning of December of 2005." *Id.*

While the individual does not dispute the reported history of her alcohol use in the late 1980s and early 1990s, she testified at the hearing that she did not tell the DOE psychiatrist that she knowingly drives while intoxicated. She admits of an instance where she was intoxicated in December 2005, but maintains that she did not drive on that occasion. "I think we got wires crossed there. That was the hot tub incident, you know, that I was talking about. But, yeah, I had three or four drinks, but I was at home in my own hot tub. And I certainly wasn't going anywhere." Tr. at 28. Based on my

observation of the individual's testimony, I find her explanation to be entirely credible. Moreover, as discussed below, the individual brought forth testimony from several individuals who have first-hand knowledge of the individual's use of alcohol, each of whom describe the individual as a responsible drinker.

Nonetheless, there is a legitimate security concern arising from the possibility that the individual might return to her prior pattern of drinking to excess. In other DOE access authorization proceedings, hearing officers have consistently found that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE § 82,807 (2005) (and cases cited therein). The remainder of this decision will focus on whether that legitimate concern has been resolved, i.e., whether the risk of the individual's return to her prior pattern of drinking is low enough that granting her clearance would not endanger the common defense and security and would be clearly consistent with the national interest.

#### ***B. Whether the Security Concerns Have Been Resolved***

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether granting or restoring access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

"In resolving a question concerning an individual's eligibility for access authorization," I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c).

How general factors such as those above are to be applied in a case involving alcohol use is specifically discussed in the most recent revision of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information. <http://www.archives.gov/isoo/pdf/hadley->

adjudicative-guidelines.pdf (December 29, 2005). Guideline H, Alcohol Consumption, states in pertinent part:

*Conditions that could mitigate security concerns include:*

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or *responsible use (if an alcohol abuser)*;

*Id.* (emphasis added).

Three specific conditions discussed in Guideline H that have particular relevance to the present case are: (1) how much time has passed since the behavior that raises the security concern; (2) whether the individual has acknowledged the problematic nature of her prior alcohol use; and (3) the extent to which the individual has established a pattern of responsible use of alcohol. Applying these factors in this case leads me to conclude that there is a very low risk that the individual will return to a pattern of alcohol use that will pose a security risk in the future.

### ***1. Length of time since problems related to alcohol use***

First, I note that it has been over 15 years since the individual's most recent DUI arrest. At the time of that arrest, the individual had recently turned 28 years old. This, by itself, would arguably be sufficient to conclude that, in the words of the Adjudicative Guidelines, "so much time has passed" that the individual's irresponsible use of alcohol is "unlikely to recur" and "does not cast doubt on the individual's *current* reliability, trustworthiness, or good judgment." *Id.* (emphasis added).

### ***2. Acknowledgment of problematic nature of past alcohol use***

Further, it is clear from the individual's testimony that she acknowledges and takes full responsibility for her prior actions with regard to alcohol abuse, and that her life has changed fairly radically in the intervening 15 years. At the hearing, I asked the individual what motivated her to modify her drinking habits.

I would have to say I grew up. I learned some very hard lessons, obviously. You can tell that from the arrest record. The type of people that I was associating with changed, the types of activities I was engaging in changed. It was a lifestyle change. I began just simply motivating myself towards a better existence. I was very fortunate. I was able to get on at the Department of Energy site. . . . I wanted to begin

employment there, because they had a tuition reimbursement program, and I could go to school. I began there in '94, I started school in '96, and completed a four-year bachelor's degree while working full-time plus, and graduated with the first one in 1999, and my second one in 2000.

Tr. at 24-25.

**3. *Whether the individual has established a pattern of responsible alcohol use***

The individual testified that she has not used alcohol excessively since her 1992 DUI arrest, and described her current drinking habits as follows:

I'll get home from work. I'll make a cocktail for my husband and myself. . . .

. . . .

[I]t's not every day. There's not even a regular pattern to it. Most generally on Thursdays after the last day of work, I have a drink in the evening. There is no specific set pattern to what we do. . . .

. . . .

[On weekends it] [d]epends on what we're doing, depends on the time of year. Yeah, we have a couple of beers in the afternoon when we're outside doing yard work in the summer.

Tr. at 25-26. After hearing this testimony, the DOE consultant psychiatrist testified that it was consistent with the information reported during his March 2006 evaluation of the individual. Tr. at 32. Further, I note that it is consistent with the account provided by the individual in her December 2005 PSI. DOE Exhibit 6 at 7-8. Moreover, that the individual has firmly established a pattern of responsible drinking was corroborated by the witnesses called by the individual to testify at the hearing.

The first of these witnesses to testify has known the individual since 1991, and worked with her at another DOE site until December 2004, when she moved to her current location. The witness' testimony indicates that he has had many opportunities to observe the individual's drinking habits.

Well, we used to see each other like once a week at the baseball games. I would see both her and her husband at the softball games. But once those died out, not very frequently. We usually run into one another at the going away functions, . . . I also had a Christmas party, and [the individual and her husband] would always show up to that. . . . [W]e would run into each other maybe once a month tops. . . .

. . . .

[O]ver about the last few years, they've laid off -- well, now everyone's laid off. But we've had going away functions usually on Thursday nights, . . . we would all get together have a couple of beers, eat some wings, talk about old times, wish them well, whoever the group happened to be. . . . we would run into each other there. . . . [O]ccasionally . . . [w]e would have dinner together, something like that. That's about all.

Tr. at 43-43. This witness testified that he has never seen the individual intoxicated nor having consumed alcohol to a point where he would have considered her judgment to be impaired. *Id.* at 40-41, 44.

This witness also testified as to the individual's growth and improvement over the years:

I've seen this a lot where people have done something that they regret many, many years ago, and for some reason it tends to come back and bite them. And I -- I think that the people that we're talking to right now need to know that you are one of the prime examples of somebody who starts out with basically nothing and ends up putting herself through school and working every day to improve herself and become a better, better person. And I think that deserves an awful lot of credit.

And I personally am very, very proud of you, because you've done what very few people at [the site] did. They had the opportunity, they just couldn't be bothered.

Tr. at 45-46.

The individual's second witness has known the individual for at least ten years, and worked with her until she transferred to her present location in December 2004. During the time the individual worked at her former location, the witness and the individual

rode together to go to school at [a local university]. We were both taking night classes down there, and occasionally we would stop when other people from work were stopping up at one of the local establishments, after -- you know, on our way back, stopped for a beer or two. But during that time, it was, you know, fairly frequent. I mean, maybe a couple of nights a week.

Other than that, though, it was more or less a special event, like I said, a golf outing, a holiday party, maybe like [the individual] said, a going away party. We had a lot of going away parties here at [the site], because over the course of the last couple of years, we've laid off about 3,000 employees. You know, everybody working together

for ten years or so, you get to know everybody pretty well. So I would say, you know, at points it was a few times a week, and then there was other times where it was probably once every couple of months maybe.

Tr. at 50-51. The witness testified that, while at a majority of these occasions alcohol was present, he has never seen the individual in a state he would describe as intoxicated. *Id.* at 53.

The third witness called by the individual has been her coworker since December 2004. He testified that he has seen her on social occasions about two to three times per month, and that alcohol has been present at some of these occasions. When asked whether he had ever seen the individual intoxicated, he replied, “No, not to the point of being impaired, no. . . , I guess it depends on the interpretation of intoxicated. . . . As far as have I seen her drinking, yes. Have I seen her drinking to the point where she was impaired, no.” Tr. at 61.

Q [by DOE Counsel]. Okay. You haven't seen her at a point where you would be concerned about getting in a car with her driving?

A. No.

*Id.*

#### ***4. Applying the relevant factors to the present case***

With reference to the three conditions discussed above from the Adjudicative Guideline specifically pertaining to alcohol use, I note that: (1) over 15 years have passed since the individual's most recent DUI arrest; (2) the individual has acknowledged the issues she has had in the past with alcohol abuse; and (3) the individual has since that time established a long-standing pattern of responsible alcohol use.

Unlike the Adjudicative Guidelines, the Part 710 regulations do not list mitigating factors that would specifically apply to a case involving alcohol use. However, as discussed above, the regulations do list factors that I am to take into account in every case, and several of these are mitigating factors as applied to the present case, including the “recency of the conduct; the age and maturity of the individual at the time of the conduct; . . . the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; [and] . . . the likelihood of continuation or recurrence; . . .” 10 C.F.R. § 710.7(c).

Application of this last factor, “the likelihood of continuation or recurrence,” is determinative in this case, and is ultimately a function of the other preceding factors. Thus, the more time that has passed since the individual's problematic alcohol use, the less likely she will return to that pattern of use in the future. Similarly, the fact that the individual is now in her forties reduces the likelihood that she will again engage in behavior that she has not displayed since she was in her twenties. Also lowering

the chance of recurrence are the behavioral changes of the individual in the last 15 years, both in terms of her success in education and career, and her establishment of a responsible pattern of alcohol use.

Though invited to do so, the DOE consultant psychiatrist declined to opine on the likelihood of the recurrence of alcohol abuse in this case, instead offering the following general observation.

[I]n taking a look at human behavior to try to look at the future, what we might expect down the road, all we have to go on is what has happened in the past. And to take a look at what has happened before now or the events culminating to the present, we can expect much of the same in the future unless there's been something to change that behavior.

Tr. at 22. To the extent that this observation is helpful to my decision,<sup>2</sup> it correlates with the principles set forth in the Adjudicative Guidelines, i.e., that a concern relating to alcohol use can be mitigated both by the length of time since the problematic use and the pattern of responsible use that has been established in the intervening period.

Considering all of the above, I find that the concern raised in the present case has been sufficiently mitigated. The individual has put her past excessive use of alcohol far behind her, and has since dramatically changed her circumstances for the better, while at the same time proving that she can sustain her long-standing pattern of responsible drinking. As such, I find the likelihood that the individual will return to the abusive use of alcohol, the only potential concern in this case, is very low.

### **III. Conclusion**

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the individual's eligibility for a security clearance. However, the concern raised by that evidence has been sufficiently mitigated such that, "after consideration of all the relevant information, favorable and unfavorable," I conclude that granting the individual's "access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a). The Manager of the DOE Operations

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<sup>2</sup> Throughout his testimony, the DOE consultant psychiatrist was reluctant to provide any opinion on the present case beyond stating that, under the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR), the individual would have to abstain from the use of alcohol for at least six months to be considered in "full remission" as to the diagnosis of "Alcohol Abuse, by History." The psychiatrist testified that the individual would remain in "partial remission" under the DSM, regardless of whether and for how long the individual had established a pattern of responsible drinking. Tr. at 34-35 (when asked "though it's not full remission, does the concern lessen over time if she manages to not get in trouble with her alcohol?", the psychiatrist answered, "Well, there again, that would be a judgment. I guess how a person interprets the events, that's really not my position to interpret as it is to comment on the facts and how they fit within the medical diagnosis."); Tr. at 12 ("To be honest, I'm not completely familiar with the legal definition of rehabilitation, however as it's been presented to me, I interpret that as full remission.")



Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: February 23, 2007